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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Implementation of the Local Competition  
Provisions in the Telecommunications Act  
of 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CC Docket No. 96-98

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REPLY COMMENTS OF ANCHORAGE TELEPHONE UTILITY

The purpose of the Telecommunications Act of 1996 was to develop robust competition in the local exchange markets, not to bankrupt the incumbent local exchange carriers ("LECs") or to replace the incumbent LECs with a new monopolist.

Accordingly, in its initial comments, ATU urged the Commission

- (a) to adopt federal guidelines that would implement Section 251(f)(2) of the Act by creating a rebuttable presumption for suspending or modifying the unbundling, interconnection and other requirements of Sections 251(b) and (c) in response to a request by a LEC serving less than 2 percent of access lines nationwide, and
- (b) to articulate standards for determining what constitutes a bona fide request for unbundling, interconnection or rates from a potential reseller or local exchange competitor that triggers a LEC's obligations pursuant to Section 251.

These reply comments respond to the initial comments filed by other parties that addressed these issues, and confirm the merit of ATU's proposals.

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**A. National Guidelines for Implementing Section 251(f)(2).**

Support for federal guidance in applying Section 251(f)(2) comes from all segments of the telecommunications industry.<sup>1/</sup> As noted in the comments filed by the South Dakota Public Service Commission, the resources and expertise of State commissions vary greatly. Many simply do not have adequate staff to devote to the time-consuming process of crafting competitive telecommunications policies on their own. Especially with more than 1000 LECs serving less than 2 percent of the Nation's of access lines, in the absence of federal guidelines, State decisions as to whether, when and how to suspend or modify the requirements of Section 251(b) and (c) are sure to differ substantially.

Incumbent LECs -- especially small and mid-sized LECs -- will not necessarily have a competitive advantage over competitors in the local exchange market. For this very reason, Congress included Section 251(f)(2) in the Telecommunications Act of 1996. Section 251(f)(2) was adopted to protect consumers, to provide some relief to small and mid-size LECs from the financial strains of responding to a request under Section 251(b) or (c), and to ensure a level playing field for small and mid-size LECs against competitors with greater financial resources and without universal service and

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<sup>1/</sup> See, e.g., Comments of South Dakota Public Service Commission at 1-2, Comments of Cincinnati Bell Telephone Company at 39-42, Comments of National Cable Television Association at 63-66, Comments of Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") at 9-13, Comments of General Communication, Inc. at 16-19, Comments of National Cable Business Association at 21-22, and Comments of Centennial Cellular Group at 10-17.

other federal and state imposed rate and service obligations.<sup>2/</sup> For these LECs, Congress clearly placed their financial stability and their role in providing universal service at least on an equal footing with the implementation of competition.

As stated in ATU's initial comments, the Commission should adopt federal guidelines that would create a presumption that competition should be suspended or modified under appropriate circumstances.<sup>3/</sup> Such guidelines would help assure consistent application of Section 251(f)(2) yet still allow States the necessary flexibility to address special circumstances.<sup>4/</sup>

Several of the standards for Section 251(f)(2) proposed by other parties are unworkable or contrary to the language of the statute, or both. For example, the National Cable Television Association argues that the requirements of Section 251(b) and (c)

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<sup>2/</sup> See S. Rep. No. 104-24, 104th Cong., 1st Sess. 22 (1995).

<sup>3/</sup> As set forth in more detail at pages 3-4 of ATU's initial comments, the requirements of Sections 251(b) and (c) should be suspended or modified in the following circumstances:

- where a LEC would not be able to recover the total cost of its obligations under Section 251(b) or (c);
- where the rates for resale, interconnection, network elements or other services would not be cost-based or would produce a subsidy to the new entrant;
- where compliance with Section 251(b) or (c) would create an undue financial risk for the incumbent LEC;
- where the request for services under Section 251(b) or (c) is not bona fide; or
- where a requested arrangement under Section 251(b) or (c) has not previously been implemented by a large LEC.

<sup>4/</sup> The guidelines would create a rebuttable presumption and would be fully consistent with Section 251(d)(3) of the Communications Act.

regarding resale, reciprocal compensation and the duty to negotiate may not be the subject of a petition because they do not apply "to telephone exchange facilities."<sup>5/</sup> This reading of Section 251(f)(2), however, is inconsistent with the statute. To the contrary, Section 251(f)(2) provides that a qualifying LEC may petition "for suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to the telephone exchange service facilities specified in the petition." (emphasis added). Thus, the phrase "telephone exchange service facilities" simply requires a LEC to specify the particular facilities for which suspension or modification is being sought, thereby precluding a blanket exemption.

TLD contends that LECs entering long distance or video programming should be ineligible for a suspension or modification of the requirements of Section 251(b) or (c). The purpose of Section 251(f)(2) -- to ensure a level playing field for small and mid-size LECs -- is not in any way eroded by a LEC's decision to compete in the long distance or video programming markets. Indeed, TLD's proposal would produce an absurd result: A small or mid-size LEC would be denied the protections of Section 251(f)(2) designed to allow it to compete effectively with a large IXC in local exchange services if that LEC attempts to compete against that large IXC in the IXC's dominant market.<sup>6/</sup>

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<sup>5/</sup> Comments of the National Cable Television Association at 63-64.

<sup>6/</sup> TLD also urges the Commission to establish minimum numerical benchmarks for determining a significant adverse economic impact on a LEC's subscribers. Such  
(continued...)

The Small Cable Business Association similarly contends that the provisions of Section 251(f)(2) should only apply where the carrier requesting unbundling, resale interconnection, rates or other benefits under Section 251 is a large global or nationwide entity and should never apply when the requesting carrier is a small cable company. Under the Act, however, a suspension or modification is warranted whenever a request under Section 251 -- regardless of who makes it -- would result in a significant adverse economic impact on users of telecommunications services or would be economically burdensome or technically infeasible. The financial strength of the requesting carrier is only relevant insofar as it may affect the nature and scope of the request under Section 251. If the request would result in an adverse economic impact or would be economically burdensome or technically infeasible, then a petition by the LEC is warranted under Section 251(f) and, upon appropriate showing, must be granted.

**B. Standards for a Bona Fide Request Under Section 251(b) and (c).**

The initial comments in this proceeding also demonstrate the need for national standards defining what constitutes a bona fide request to an incumbent LEC for unbundling, interconnection, rates and other services under Section 251(b) or (c). As reiterated by many commenters, the Commission must adopt standards to discourage spurious requests under these sections. Once an incumbent LEC receives a request for

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<sup>6/</sup>(...continued)

benchmarks, however, could severely circumscribe a State's ability to respond to unique circumstances. Moreover, requiring a State to wait until 50 percent of a LEC's customers are adversely affected (e.g., can no longer afford local exchange service) before taking remedial action is unduly harsh.

interconnection and/or services under Sections 251(b) or (c), time consuming and burdensome obligations attach. The request process is thus fraught with potential for abuse. This is especially true because entities submitting requests under Section 251(b) or (c) may already be competitors of the incumbent LEC in areas such as long distance, cable television and wireless services. Thus, there are undeniable incentives for such entities to submit burdensome requests regardless of whether they actually plan to purchase the requested services or facilities.

In addition, entities can submit requests under 251(b) or (c) simply as a shopping exercise, creating business plans based on information and pricing obtained from LECs with no real commitment on the part of the requester to actually order or use specific services. ATU has already received two letters purportedly under 251(b) and (c) and the scope and range of these letters could not be more diverse. One letter simply asks that ATU "establish wholesale rates" and meet to negotiate "other terms and conditions." Since ATU received this letter over three months ago, ATU has had only one meeting with the sender. At that meeting, the sender conceded that it did not know what services it wished to purchase and promised to get back to ATU with more specifics. Such an open-ended, noncommittal letter cannot be considered a bona fide request that imposes on ATU a duty to negotiate or begins the clock running for arbitration.

The other letter received by ATU asks for negotiations to begin for over 80 different topics, services or obligations identified in the legislation. At the same time, the

sender has made no commitment or obligation to actually use or acquire these services. Clearly requests under Section 251(b) or (c) must be more than shopping sprees where the LECs must commit significant resources to pricing every conceivable network element and service when those services may never be purchased. To avoid such shopping sprees, ATU continues to urge the Commission to require carriers making interconnection requests to identify: (a) the specific services, points of interconnection and network elements being sought, (b) any desired interface specification, (c) how each interconnection point, service or network element will be used, (d) the estimated delivery dates for wholesale services, interconnection facilities or other services or elements, (e) the quantity of facilities, services and elements ordered at the desired price, and (f) any desired changes in LEC operations or procedures.

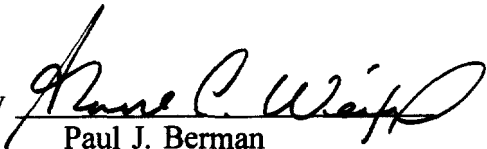
To assure that requests meeting these standards to not unduly burden LECs and to prompt good faith negotiations, the Commission should also require parties submitting such requests to purchase the items requested in the quantity requested or to reimburse the incumbent LEC's cost of processing the request. This is consistent with Section 252(d)(1) requiring the price for interconnection and network elements to be set to allow LECs to recover their costs, and Section 251(d)(3) requiring only avoided costs to be excluded from LEC resale rates.

Contrary to the suggestion of the Rural Telephone Coalition, these proposals are also consistent with Section 253(b) of the Communications Act, which preserves a State's ability to impose requirements to advance universal service, to protect

the public safety and welfare, to ensure the continued quality of telecommunications services and to safeguard the rights of consumers.<sup>7/</sup> Adopting national standards that discourage spurious requests for interconnection and other services will permit LECs -- especially small and mid-sized LECs -- to continue to focus on providing local exchange service and will help protect them from costly distractions that divert their resources without offsetting public interest benefits. Indeed, it is difficult to imagine how ATU's proposed standards for a bona fide request under Section 251 could be at odds with State regulations designed to protect consumers and universal service.

Respectfully submitted,

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<sup>7/</sup> See Comments of Rural Telephone Coalition at 12-13.